

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "H", MUMBAI
BEFORE SHRI VIKAS AWASTHY, JUDICIAL MEMBER AND
SHRI GAGAN GOYAL, ACCOUNTANT MEMBER
ITA No. 2798/Mum/2022 (A.Y. 2011-12)
ITA No. 2800/Mum/2022 (A.Y. 2010-11)

M/s Hinglaj Metals & Alloys P. Ltd.

2 Sheetal CHSL, Ground Floor,
Saptrishi Sankul Ovipada,
Dahisar East, Mumbai-400068.

PAN: AAACH9744H

..... Appellant

Vs.

CIT(A), NFAC,
Delhi.

..... Respondent

| | | |
|-----------------------|---|--------------------------------------|
| Appellant by | : | Sh. Amit Jhaveri, CA |
| Respondent by | : | Sh. Tejinder Pal Singh Anand, Sr. DR |
| Date of hearing | : | 02/01/2023 |
| Date of pronouncement | : | 20/03/2023 |

ORDER

PER GAGAN GOYAL, A.M:

These appeals by assessee are directed against the order of National Faceless Appeal Centre, Delhi [for short 'NFAC'] vide common order dated 01.08.2022 under section 250 of the Income Tax Act, 1961 (for short 'the Act') for A.Ys. 2011-12& 2010-11. Order of Ld. CIT (A) dated 01.08.2022 was received by assessee on same day but as the director concerned of the assessee company is a senior citizen and there was no business in the company during COVID period and

thereafter with NIL turnovers. During the COVID period none of the notices or order received in physical form and all the communications were done on the e-mail id and mobile nos. Of accountant, who left the job during the COVID period and appeal was filed on 02.11.2022. It is noticed that the appeal is barred by limitation by 33 days. The Hon'ble Supreme Court of India to mitigate the hardship caused by pandemic took suo-moto cognizance for Extension of Limitation reported as 441 ITR 722. Honourable Supreme Court held that due to the outbreak of the covid-19 pandemic in March, 2020, the Supreme Court took suo-moto cognizance of the difficulties that might be faced by litigants in filing petitions or applications or suits or appeals or all other proceedings within the period of limitation prescribed and directed extension of the period of limitation in all proceedings with effect from March 15, 2020 till further orders. Further orders were passed on March 8, 2021, April 27, 2021 and September 23, 2021. On an application, the Supreme Court passed further orders considering the impact of the surge of the virus on public health and adversities faced by litigants in the prevailing conditions directing : (i) that the order dated March 23, 2020 was to be restored and the period from March 15, 2020 till February 28, 2022 was to be excluded for the purposes of limitation as might be prescribed under any general or special laws in respect of all judicial or quasi-judicial proceedings ; (ii) consequently, the balance period of limitation remaining as on October 3, 2021, if any, was to become available with effect from March 1, 2022 ; (iii) in cases where the limitation would have expired during the period between March 15, 2020 till February 28, 2022 notwithstanding the actual balance period of limitation remaining, all persons shall have a limitation period of 90 days from March 1, 2022. In the event the actual balance period of limitation remaining, with effect

from March 1, 2022 was greater than 90 days, that longer period to apply ; (iv) that the period from March 15, 2020 till February 28, 2022 also to be excluded in computing the periods prescribed under sections 23(4) and 29A of the Arbitration and Conciliation Act, 1996 , section 12A of the Commercial Courts Act, 2015 and provisos (b) and (c) of section 138 of the Negotiable Instruments Act, 1881 and any other laws, which prescribe periods of limitation for instituting proceedings, outer limits (within which the court or Tribunal could condone delay) and termination of proceedings. Referred Cognizance For Extension of Limitation, In Re (2020)424 ITR 314 (SC), Cognizance For Extension of Limitation, In Re (2020)432 ITR 206 (SC), Cognizance For Extension of Limitation, In Re (2021) 226 Comp Case 127 (SC), Extension of Limitation, In Re (2021) 438 ITR 296 (SC). In term of the aforesaid decision of Hon'ble Supreme Court, we condone the delay in filing of this appeal by assessee and admit the appeal for adjudication.

The assessee has raised similar grounds of appeal for both the Assessment Year (AY). We shall first take up appeal for A.Y. 2011-12. The assessee has raised the following grounds of appeal:

"1) The Ld. CIT(A), NFAC not considered the facts that addition has been on 100% of purchases and fault on the part of the suppliers in complying the legal formalities.

2) The Ld. CIT(A), NFAC not considered the fact Hon'ble ITAT has already set aside the order of CIT(A) in the main assessment order and remanded the same to AO.

3) The Ld. CIT(A), NFAC not considered the fact that penalty is levied on purchases and there is no concealment of facts and the said penalty has been deleted by the Ld. CIT(A) in Madhu B Agarwal's individual case (Director of the assessee). Department had filed an appeal to the Hon'ble ITAT against the order of the CIT(A) whereby the said appeal was also dismissed by the Hon'ble ITAT.

4) The Hon'ble ITAT, has deleted penalty in similar case fully.

Hon'ble Punjab & Haryana High Court in the case of Harigopal Singh v. CIT[258 ITR85].

Sushil Chhatrabhuj Raheja Vs ACIT (ITA No 1375/Mum/2017).

Late Shri. Upendra G. Sheth-ITA No. 3365/Mum. /2017 dated 07-09-2017.

Tans Conduct (India) v/s ACIT Circle 21(1), Mumbai - ITA No. 3198/Mum/2016.

CIT vs. Manjunath Cotton & Ginning Factory [2013] (Karnataka)

Pankaj B Tike V/s PCIT-31, ITA No 3391/3392/Mum/2017359 ITR 565

5) We reserve our right to add, amend, alter anything stated hereinabove or any be stated herein after."

2. Brief facts of the case are that assessee filed its return of income on 28-09-2011 declaring total income at Rs. 74,670/-. Assessee company was engaged in the business of trading in ferrous & non-ferrous alloys. Case of the assessee was reopened u/s. 148 based on information received from Maharashtra Sales Tax Department that the assessee has indulged in the activity of purchasing/issuing bogus bills to the tune of Rs. 2,28,08,524/-. During the Course of assessment proceedings it was found that assessee had entered into purchase transactions with certain parties, whose names were appearing in the list of hawala entry operators. The same has been claimed by the assessee in the P&L account amounting to Rs. 3,81,07,208/- from 15 parties.

3. AO issued notices u/s. 133(6) of the Act, to the parties calling for information of accounts, details of transactions, supporting bills and bank statement etc. However, the said notices were returned unserved with a remark "Left" or "Not Found/Known" etc. Assessee has also not provided any new addresses or their present whereabouts. Consequently, AO made an addition of

Rs. 5,85, 11,957/- on various counts. Aggrieved with this order of AO, assessee preferred an appeal before the Ld. CIT(A), who in turn restricted addition up to Rs. 3,81,07,728/- and deleted addition of Rs. 2,03,30,079/-. On this figure of Rs. 3,81,07,208/- AO imposed penalty u/s. 271(1)(c) of the Act at lowest side @ 100% amounting to Rs. 1,26,58,261/-

4. Against this order of penalty u/s. 271(1)(c), assessee preferred an appeal before the Ld. CIT(A). We have gone through the order of AO u/s. 271(1)(c), Order of Ld. CIT(A) u/s. 250 and submissions of the assessee. We observed that during the appeal proceedings assessee never turned up to participate in the proceedings and there were total 8 opportunities were provided to the assessee from 01.05.2019 To 20.07.2022. Notwithstanding these facts observed up till, we came across an order of coordinate bench vide ITA No. 2878/Mum/2018, Dated: 05/12/2019, wherein bench vide its order set aside the assessment order and restored the matter back to the file of Ld. CIT(A) for re-adjudication.

5. Ld. CIT(A) totally ignored this fact of the matter while deciding the appeal of the assessee. Technically the assessment order based on which this whole proceeding of penalty was built, is no more in existence, hence this order of penalty also not tenable. Till the time, the Ld. CIT (A) pass another order in compliance to ITA No. 2878/Mum/2018, dated 05/12/2019, no order of penalty can be passed. In view of above, we delete this penalty in absence of any assessment order, with a liberty to the department to reinstate the proceedings of penalty subject to the outcome of the order passed by Ld. CIT (A) in compliance to ITA No. 2878/Mum/2018 dated: 05/12/2019.

6. In the result, penalty for both the years are deleted on this technical ground before going into the merits of the cases.

7. **In the result, appeal of the assessee for both the years are allowed.**

Order pronounced in the open court on 20th day of March, 2023.

Sd/-
(VIKAS AWASTHY)
JUDICIAL MEMBER

Sd/-
(GAGAN GOYAL)
ACCOUNTANT MEMBER

Mumbai, दिनांक/Dated: 20/03/2023

SK, Sr.PS

Copy of the Order forwarded to:

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Responder.
3. आयकर आयुक्त CIT
4. विभागीय प्रतिनिधि, आय.अपी.अधि., मुंबई/DR, ITAT, Mumbai
5. गार्ड फाइल/Guard file.

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BY ORDER,

(Dy. /Asstt. Registrar)
ITAT, Mumbai